

# CALIFORNIA BOARD OF LEGAL SPECIALIZATION OF THE STATE BAR OF CALIFORNIA



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## IMMIGRATION AND NATIONALITY LAW CERTIFICATION EXAM

<b>Date</b>	Sunday, August 14, 2005 9:00 a.m. – 4:00 p.m.
<b>Registration deadline</b>	Friday, July 1, 2005
<b>Exam sites</b>	Westin at San Francisco Airport Radisson at Los Angeles Airport
<b>Fee</b>	\$300 writing (\$350 if using a laptop PC) <i>fee includes a box lunch</i>
<b>Exam format</b>	<p>The exam is divided into two three-hour sessions – the morning session includes 50 multiple-choice questions and two essay questions; the afternoon session includes four essay questions. There are no optional questions; each examinee is expected to answer all questions on the exam.</p> <p>The 50 multiple-choice questions, worth three points each, are designed to be answered in approximately 90 minutes. Each essay question is worth 75 points and is designed to be answered in approximately 45 minutes.</p>
<b>Scoring</b>	The maximum number of points available is 600. A passing score is 420 points, or 70%. Exams with scores between 65-70% are re-read by a Committee of Reappraisers. The decision of the Committee is final, pursuant to section 8.3 of the Rules Governing the State Bar of California Program for Certifying Legal Specialists. Results are mailed only after all reappraisals have been completed.
<b>Reference materials</b>	Examinees may use the following reference materials during the exam: <i>Code of Federal Regulations</i> and <i>Immigration &amp; Nationality Act</i> . Publications must be unannotated and free of any stray marks. Handwritten notations (other than underlining or highlighting) will not be allowed. The use of Post-It type tabs to mark specific book sections is acceptable, but the tabs must not have writing on them.
<b>Testing accommodations</b>	Available at both sites. Contact <a href="mailto:ivonne.broussard@calbar.ca.gov">ivonne.broussard@calbar.ca.gov</a> or (415) 538-2145 for more information.
<b>Study resources</b>	See attached standards for certification, exam specifications, and sample exam questions.

**For more information, visit [www.californiaspecialist.org](http://www.californiaspecialist.org)**

## THE STANDARDS FOR CERTIFICATION AND RECERTIFICATION IN IMMIGRATION AND NATIONALITY LAW

### 1.0 DEFINITION

Immigration and nationality law is the practice of law dealing with matters arising under and related to the Immigration and Nationality Act of 1952, as amended (Title 8 U.S. Code), and other laws and regulations dealing with immigration and naturalization.

### 2.0 TASK REQUIREMENT FOR CERTIFICATION

An applicant must demonstrate that within the five (5) years immediately preceding the initial application he or she has been substantially involved in the practice of immigration and nationality law. A prima facie showing of substantial involvement in the area of immigration and nationality law is made by performance of the following activities:

- 2.1 Participated as principal attorney in one-hundred fifty (150) cases in the following two categories, with not less than twenty-five (25) cases in each category:
  - 2.1.1 Application for immigrant and nonimmigrant status, and
  - 2.1.2 Removal, deportation, or exclusion hearings before immigration judges. Not less than three (3) cases in this category must be contested proceedings; and
- 2.2 Participated as principal attorney in six (6) of the following thirteen (13) procedures and at least three (3) cases in each of the six (6) procedures
  - 2.2.1 Naturalization or Nationality cases,
  - 2.2.2 Administrative Appellate Practice,
  - 2.2.3 Judicial review of immigration proceedings in the federal courts (includes but is not limited to: Petition for Review, Habeas Corpus, Petition for Declaration of Judgment, Writ of Mandamus);
  - 2.2.4 Labor certifications,
  - 2.2.5 Contested removal, deportation or exclusion hearings or rescission proceedings before immigration judges,

- 2.2.6 Motions, writs or pleas in criminal cases relating to collateral immigration consequences in federal or state courts,
- 2.2.7 Bond or custody proceedings,
- 2.2.8 Refugee or asylum applications,
- 2.2.9 State Department or Consular Practice,
- 2.2.10 Immigrant visa petitions, applications, or immigrant waivers,
- 2.2.11 Immigration consequences of mergers, reorganizations, downsizing and other business or employment changes,
- 2.2.12 Non-immigrant visa petitions or applications, or non-immigrant waivers (includes, but not limited to ancillary applications such as labor condition applications),
- 2.2.13 If the above categories do not apply, any other subject matter category may be used, such as, but not limited to, immigration related enforcement proceedings other than immigration court. The applicant must submit descriptions of each category.

Principal attorney is the attorney who spends a majority of the time on a case in the activities of preparation, review, filing and representing a client at an interview or hearing. There can be only one principal attorney per case.

### 3.0 EDUCATIONAL REQUIREMENT FOR CERTIFICATION

An applicant must show that within the three (3) years immediately preceding the application for certification, he or she has completed not less than forty-five (45) hours of educational activities specifically approved for immigration and nationality law, as follows:

- 3.1 Immigrant Visas (minimum of 15 hours required) - immediate relatives; relative preference categories; special immigrants; labor certification; grounds for exclusion and waivers; adjustment of status; legalization; registry and consular procedures;

- 3.2 Non-Immigrant Visas (minimum of 8 hours required) - change of non-immigrant status and all categories of non-immigrant visas;
- 3.3 Removal/Deportation/Exclusion Procedures (minimum of 12 hours required) - arrest and custody procedures; removal/deportation/exclusion grounds and waivers; defenses; immigration and administrative law court procedures and rules; employer sanctions; anti-discrimination procedures and defenses;
- 3.4 Administrative and Judicial Review (minimum of 6 hours required) - appeals to an appellate body of the Department of Justice, Department of State, Department of Labor; motions to reopen; motions for reconsideration. The subject matter of Judicial Review may include: appeals to the Court of Appeals, *habeas corpus* proceedings, and other district court actions; and
- 3.5 Citizenship and Naturalization (minimum of 4 hours required) - naturalization; derivation; acquisition and loss of citizenship.

#### **4.0 TASK REQUIREMENT FOR RECERTIFICATION**

An applicant for recertification must show that, during the current five (5) year certification period, he or she has had direct and substantial participation in the practice of immigration and nationality law. The Commission will accept the following activities as compliance with the task requirement:

- 4.1 Participation as principal attorney in one-hundred fifty (150) cases; and
- 4.2 Participation as principal attorney in six (6) of the thirteen (13) procedures listed under section 2.2 above, with at least three (3) cases in each of the six (6) procedures.

#### **5.0 EDUCATIONAL REQUIREMENT FOR RECERTIFICATION**

An applicant for recertification must show that, during the current five (5) year certification period, he or she has completed not less than sixty (60) hours of educational activities specifically approved for immigration and nationality law specialists, not less than forty-five (45) of which must be shown in the same manner as in section 3.0.

## Specifications For State Bar of California Immigration and Nationality Law Certification Examination

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**Purpose of the Examination:** The Immigration & Nationality Law Examination consists of a combination of essay and multiple-choice questions. It is designed to verify the applicant's knowledge of and proficiency in the usual legal procedures and substantive law that should be common to specialists in the field as represented by the skills listed below. We recognize that these skills are interrelated, which may require that you apply several skills in responding to a single exam question. Also, the order of the skills does not reflect their relative importance, nor does the skill sequence represent an implied order of their application in practice.

Your answers to the exam questions should reflect your ability to identify and resolve issues, apply the law to the facts given, and show knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. Of primary importance for the essay questions will be the quality of your analysis and explanation.

Knowledge of the following fundamental lawyering skills may be assessed:

### **Skill 1: Professional Responsibility**

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- 1.1 Duties to clients, opposing counsel and the Court
- 1.2 Bases for attorney's fees
- 1.3 Bases for sanctions
- 1.4 Fee agreements
- 1.5 Arbitration/mediation and dual representation
- 1.6 Conduct resulting in malpractice/discipline

### **Skill 2: Classifications**

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- 2.1 Non-immigrant visa categories
- 2.2 Immigrant preference categories
- 2.3 Immediate relatives
- 2.4 Rule of chargability
- 2.5 Preconceived intent
- 2.6 Inadmissibility grounds
- 2.7 Consular discretion
- 2.8 Waiver grounds and exemptions
- 2.9 Marriage fraud
- 2.10 Conditional resident status
- 2.11 Joint petition waivers
- 2.12 Self-petition categories
- 2.13 Labor attestations
- 2.14 Labor certifications
- 2.15 National interest waivers
- 2.16 Priority workers
- 2.17 Employer sanctions
- 2.18 Lottery visas
- 2.19 Registry

### **Skill 3: Immigration Processing & Procedures**

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- 3.1 Non-immigrant visa application procedures
- 3.2 Immigrant visa application procedures

- 3.3 Consular jurisdiction
- 3.4 Adjustment of status
- 3.5 Waiver processing
- 3.6 Affidavits of support
- 3.7 Advance parole
- 3.8 Reentry permits and travel documents
- 3.9 Employment authorization
- 3.10 Refugee and asylee adjustments

#### **Skill 4: Removal, Inadmissibility, Deportation, Exclusion**

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- 4.1 Grounds of inadmissibility
- 4.2 Grounds of removability
- 4.3 Grounds of deportation and excludability prior to IIRAIRA
- 4.4 Bond eligibility, re-determinations, conditions
- 4.5 Mandatory detention
- 4.6 Voluntary departure in removal proceedings
- 4.7 Waivers in removal, deportation & exclusion proceedings
- 4.8 Cancellation of removal for lawful permanent residents and §212(c) relief
- 4.9 Cancellation of removal for non-lawful residents and suspension of deportation
- 4.10 Asylum
- 4.11 Restriction of removal and withholding of deportation
- 4.12 Rescission
- 4.13 Termination of conditional resident status
- 4.14 Reinstatement of removal orders
- 4.15 Affirmative defenses (motions to suppress, U.S. citizenship, estoppel, etc.)

#### **Skill 5: Motions and Procedural Issues**

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- 5.1 Notice and proper service
- 5.2 In-absentia hearings and orders
- 5.3 Motions to reopen
- 5.4 Motions to reconsider
- 5.5 Special rule motions (in absentia, NACARA, etc.)
- 5.6 Administrative appeals
- 5.7 Judicial review of administrative actions and orders
- 5.8 Federal District Court actions
- 5.9 Federal Court of Appeals review

#### **Skill 6: Naturalization and Citizenship**

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- 6.1 Good moral character
- 6.2 Physical presence
- 6.3 Abandonment of lawful permanent resident status
- 6.4 Special rules categories
- 6.5 Naturalization procedural issues
- 6.6 Acquisition
- 6.7 Derivation
- 6.8 Revocation
- 6.9 Administrative naturalization

**STATE BAR OF CALIFORNIA IMMIGRATION AND  
NATIONALITY LAW CERTIFICATION EXAM**

**SAMPLE QUESTIONS**

**Sample Question #1**

Edward, a native and citizen of Malaysia, has a consultation with you. He is presently lawfully in the United States under valid H-1B visa status. Edward first entered the United States in August, 1993, with an F-1 visa issued by the American Embassy in Malaysia. He graduated from U.C.L.A. in June 1997 with a bachelor's degree in aerospace engineering. He was granted a one-year period of practical training upon graduation. His H-1B visa petition was approved in June 1998 to work as a procurement engineer for S.A. Enterprises, Inc., a United States company engaged in exporting aircraft and related items. Shortly after his I-129 was approved, Edward traveled to a U.S. Consulate in Mexico and was issued an H-1B visa valid for three years. He was granted an extension of his H-1B status in May 2001 valid until June 2004. Again, Edward went to a U.S. Consulate in Mexico to apply for another H-1B visa, which was issued for another three years.

S.A. Enterprises, Inc. filed an application for alien labor certification on behalf of Edward with the California Employment Development Department on April 30, 2001. It is still pending. S.A. Enterprises, Inc. is owned by Edward's uncle, who closed the company last month and returned to Malaysia due to an F.B.I. investigation of his activities.

Edward has been offered employment as a design engineer by another company which manufactures airplane parts. The company is willing to petition for his new H-1B and his permanent residence.

- A. When can Edward begin working for his new employer? Discuss.**
- B. Edward would like to travel next month to Germany. Does he need to apply for another visa and, if so, can he apply in Mexico again? Discuss.**
- C. Is Edward eligible for another extension of his H-1B status if his labor certification is not approved by the H-1B expiration date? Discuss.**
- D. When the labor certification is approved, what are the next steps to take to obtain permanent residency? Discuss.**

**Sample Question #2**

Miguel, a native and citizen of Mexico, came to the United States with his parents on February 21, 1986 with a Border Crossing Card, when he was 15 years old. On May 9, 1987, he was arrested with two of his friends for shoplifting. Because his Lawful Permanent Resident (LPR) parents were afraid that he would be deported for this crime, and because they felt that distance from bad influence would prevent more serious incidents, Miguel was sent back to Mexico two weeks later in the care of his grandfather. On October 11, 1987, he returned to the U.S. accompanied by his uncle, who traveled by car and stated to the DHS inspectors at the port of entry that both he and Miguel were "U.S. citizens."

Miguel adjusted status on August 5, 1991. On April 28, 1994, he was arrested for possession with intent to sell cocaine, a controlled substance, in violation of the California Health and Safety Code. He pled guilty and was convicted of the offense on March 1, 1996; he was sentenced to three years in state prison and three years probation.

On September 10, 2001, Miguel left the United States for 10 days to attend his grandfather's funeral in Mexico. On his way back to the United States, he realized that he didn't have his green card with him. To the inspector at port of entry, he stated that he misplaced his green card. A routine identification check verified that Miguel was indeed a Lawful Permanent Resident but uncovered his record of arrest and conviction for the controlled substance violation. The immigration officer took Miguel into custody as an "arriving alien" and made no recommendation for bail.

- A. What procedural steps should be taken to attempt to obtain Miguel's release from DHS custody? Why is he considered an "arriving alien" if DHS knows that he is a green card holder? What factors will be considered in making the custody determination? Discuss.**
- B. In removal proceedings, does Miguel meet the statutory requirements for cancellation? Discuss.**
- C. Is Miguel eligible for any other form of relief from removal? Discuss. Does the fact that, at the time of his plea for the controlled substance violation, Miguel was a permanent resident for less than five years determine eligibility for the relief? Discuss.**

### **Sample Question #3**

Yoshi, a native and citizen of Argentina, has been employed in Los Angeles since July of 1996 as an import/export wholesaler by Sturdy, Inc., a U.S. subsidiary of a Japanese auto parts firm. Yoshi has a high school education and previously worked for one year selling restaurant equipment. He has an outgoing personality and is fluent in English, Spanish and Japanese, assets which make him a valuable employee at Sturdy. In his job, he is responsible for selling and arranging shipment of auto parts manufactured by Sturdy's parent firm to customers in the United States and Latin America. His hard work, his language skills and his pleasant approach have boosted Sturdy's sales in Latin America to record levels.

When Yoshi was hired, he filled out the top of an I-9 form showing that he was a citizen or national of the United States. He also showed Sturdy's personnel manager a valid California driver license and an unrestricted Social Security card.

During the past few months, Sturdy has been asking Yoshi to travel to Mexico to help promote the firm's business there. This week, Yoshi finally admitted to his boss that he can't travel abroad because he and his wife were actually admitted to the U.S. for three months in 1995 via the visa waiver program and overstayed. Yoshi explained further that his elderly U.S. citizen father filed a family preference petition for him immediately after the father's naturalization in March of 2001, but the waiting time to immigrate through that petition will be very long.

- A. If Sturdy decides to continue to employ Yoshi and sponsor him for labor certification, what issues does it face in preparing the description of duties and requirements of the job offer? Discuss.**
- B. What risks do Sturdy and Yoshi face if the company decides to continue Yoshi's employment while it sponsors him for permanent residence? Discuss.**
- C. Assuming that Sturdy is successful in obtaining approval of a labor certification for Yoshi, how should he and his wife complete the process to become U.S. permanent residents? Discuss.**

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### **Sample Question #4**

Sofee is a 64-year-old woman and a citizen of Lintoli. Sofee was an artist in her country and was quite famous. However, she was frustrated with the lack of democratic freedom in Lintoli. In 1991, Sofee joined an underground organization called Artistic Revolutionary Front (ARF). ARF's goal was to seek an end to the ruling regime through non-violent acts of civil

disobedience. Unknown to Sofee, ARF received money and supplies from the Communist Party in the neighboring country of Norak.

On the night of February 1, 1992, while placing a poster over a monument dedicated to the president of the country, Sofee was caught by the police. She was taken to jail and imprisoned. She was never given a trial. Sofee had no further contact with ARF after her arrest and imprisonment. While in prison, Sofee was tortured by the police. In 1995, Sofee escaped. She fled to Italy where she sought medical treatment for the injuries she suffered while in jail. While she was in Italy, she illegally used small amounts of marijuana to ease the physical pain she was experiencing as a result of the torture.

Sofee applied for refugee status at the American Embassy in Rome. She disclosed her marijuana use during her interview at the embassy and received a waiver based on humanitarian grounds. She was admitted to the United States on February 1, 1996 as a refugee. On February 1, 1998, her application for adjustment of status to that of a permanent resident was approved. She has never left the United States since her arrival.

Sofee wants to apply for U.S. citizenship and wants to take the exam in her native language. She has difficulty concentrating and remembering and often experiences lapses of memory. She frequently experiences headaches, occasional black outs and extreme pain in her joints. She takes prescription medication for her impairments, which has the negative side effect of making her drowsy. She has a scrawled note written by her doctor who confirms her physical impairments and her prescription medication, and writes that Sofee experiences flashbacks from her time in prison and may suffer from Post Traumatic Stress Disorder. He states that her impairments are permanent and have already lasted more than 12 months. The doctor concludes in the note that the combination of Sofee's physical and mental impairments make it impossible for her to learn English and American history and civics.

- A. Is Sofee eligible to naturalize? Discuss the obstacles, if any, she faces in naturalizing. What steps may she take, if any, to resolve them?**
- B. Assume Sofee applies for naturalization, goes to her interview, but then never receives a decision. Eight months later, Sofee calls you and wants you to do something about obtaining a decision in her case. What statutory and/or regulatory procedures are available to Sofee? Discuss.**
- C. Assume Sofee applied for naturalization, went to her interview, and was unable to pass the history and civics exam. May she try again? If so, when?**

- D. Assume Sofee's application for naturalization was denied. What avenues of review, if any, are available to her? Discuss.**
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**Sample Question #5**

Juan has come to you for an initial consultation in order to discover what he can do to obtain Resident status for his wife and children. Juan continues to toil as a California farm worker, earning minimum wage, as he has done since the mid seventies. Juan is a native of the Mexican state of Michoacan and has only a sixth grade education. He speaks no English and is marginally literate in Spanish.

Juan was able to legalize via INA §210, and he has been a Legal Permanent Resident since Dec. 1, 1990. He filed an F2A I-130 petition for his wife Maria and their five children on November 15, 1994. The petition was approved by the Service Center on March 8, 1995. Since that time, Juan has been awaiting word from the U.S. government as to how and when to proceed with his family's immigration. Now frustrated, he has come to you for guidance.

Maria and the couple's three youngest children, Jose age 19, Jorge age 15, and Juana age 14, have remained in Mexico and have never been present in the U.S.

Juan's eldest children, Raul now age 28 and Rosa now 27, came to the U.S. together, entering without inspection (EWI) on October 12, 1988. Both were under 21 on November 15, 1994. Raul turned 21 on December 15, 1995 and Rosa turned 21 on August 8, 1996. Raul lives with his father Juan.

Raul, who has a well-paying job as an auto mechanic, has never left the U.S. since his first entry. In 1994, he learned of and visited a "Notario" in Los Angeles who "helps people" in Raul's situation. The Notario informed Raul that he was eligible for a work permit and a green card due to his seven years' continuous residence in the U.S.

For \$5,000, the Notario guaranteed Raul a green card and Raul hired him. The Notario did not inform Raul that his plan was to file an application for political asylum on Raul's behalf. The Notario obtained Raul's signature on a blank Form I-589, then prepared and filed the Form I-589 which included many false statements, claiming that Raul's whole family had been persecuted by government operatives because family members were activists in the opposition party.

When Raul discovered that he had unknowingly applied for asylum, he became fearful and did not attend the Asylum Office interview or the Master Calendar hearing that was later set in Immigration Court. The Order to Show Cause placing Raul in proceedings was dated

November 1, 1995. In accordance with the common procedures at that time, the Immigration Judge administratively closed the case when Raul did not appear.

Rosa lives with the U.S. citizen father of her three U.S. citizen children. They wish to marry but have not done so because Rosa has been told that, by so doing, she would cancel her father's prior petition for her. Rosa has one absence from the U.S. She went to visit her mother and siblings for two weeks in 1996. When she returned on September 15, 1996, she presented her U.S. born cousin's birth certificate to the immigration officer and tried to enter. Her false claim was detected and she was granted Voluntary Departure to Mexico. She successfully EWI'd the following day and has not departed the country again.

- A. Assume the F2A Priority Date recently became current. What advice should you give to Juan regarding the immigration to the U.S. of his wife Maria and his three younger children in Mexico? Discuss in detail the process involved and any other relevant issues that might arise.**
- B. Assume the F2A Priority date is NOT current. Can Juan, Maria and the three younger children be reunited legally in the U.S. at this time? Discuss.**
- C. Discuss all possibilities/problems/issues that are relevant concerning Raul's immigration to the U.S.**
- D. Discuss all possibilities/problems/issues that are relevant concerning Rosa's immigration to the U.S.**
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**Sample Question #6**

Aye is a 35 year old native and citizen of Myanmar. He is employed as a merchant seaman, which takes him on long trips out of Myanmar. For the last few decades, Myanmar has been ruled by a repressive military dictatorship. All political dissent is quashed. The government engages in arbitrary arrests, detentions, and various forms of torture. These conditions are well documented in country condition reports such as those issued by the U. S. State Department and Amnesty International.

One evening in January 2001, agents from the Military Intelligence Service (MIS) came to Aye's house and arrested him without a warrant. His house was searched and his wife and child were intimidated. Nothing was discovered as a result of the search, but Aye was taken to a Military Detention Center. There the MIS began an all night session of interrogation during which they beat and kicked Aye. Aye was accused of smuggling anti-government literature during his last entry into Myanmar.



In fact, Aye had not smuggled anything into Myanmar and persisted in denying his complicity. During the course of the beating, Aye denied that he had ever smuggled anti-government literature.

Aye was confined to a jail cell the following day without food or water. He was released with a stern warning that he should not ever mention the interrogation nor should he ever be involved in anti-government activity as his name was now on a watch list. Aye concluded that he had been misidentified and that the MIS was actually looking for another seaman with the same name.

After his release, he went to a physician. It was discovered that his foot had been fractured. Surgery was required to set the broken bones. Aye did not mention to his doctor the cause of his injuries. He was in a cast for three months until his foot healed.

Thereafter, Aye got an assignment that would cause him to fly to the United States and enter the country as a crewman in order to board a ship departing from an American port. On July 15, 2002, Aye flew to the U.S. with his crewman's visa and boarded his ship. He then sailed with his ship to various ports in South America, a trip that took approximately two months. At each port, Aye was given shore leave and spent several hours on shore.

Upon return to the U.S. on September 15, 2002, Aye called his wife and learned that the MIS again came to Aye's house demanding to know his whereabouts and searched the house thoroughly for anti-government literature but found nothing. Aye's wife is convinced that Aye would be apprehended upon his return to Myanmar. Aye's next crew assignment would take him back to Myanmar. Because of his fear of returning to Myanmar, he remained in the U.S. A notice to appear was issued. Aye was arrested and placed in DHS custody.

Aye comes to you (assume today's date) and you note that his next master hearing date before the Los Angeles Immigration Court is September 3, 2003, and that Aye has not previously filed an asylum application. Aye has no documents except his medical records, which confirm the fractured foot and surgery, and a copy of his Myanmar passport showing his entry into various ports in South America.

**Discuss all issues relating to Aye's claim for asylum and any obstacles thereto and what his first course of action should be.**